

A Bill to amend Title V of the Federal Property and Administrative Services Act of 1949 to incorporate therein provisions relating to the disposal of certain records of the United States Government, and for other purposes.

#### Explanation and Justification

As stated in the transmittal letter, this bill would incorporate in the Federal Records Act of 1950 (64 Stat. 583; 44 U.S.C. 392-401), which constitutes Title V of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, the provisions of the Act of July 7, 1943, relating to the disposal of records.

The bill would expand the authority of the Administrator of General Services in this area in one principal respect and would make certain other modifications in the existing legislation. The most important of these changes will be found in subsections (a) and (1) of the proposed new section 508. It would also incorporate in the definitions section of the Federal Records Act (sec. 511; 44 U.S.C. 401) the definition of the term "records" in the 1943 Act, which is now referred to in section 511, and would repeal the 1943 Act.

The present law establishes a procedure to authorize the disposal of records which are determined not to have sufficient value to warrant their permanent preservation in the Archives of the United States. The first step in this procedure is for heads of agencies to submit to the Administrator of General Services schedules of records in their custody that apparently do not, or will not after specified periods of time, have sufficient value to warrant their further preservation. If the Administrator concurs in a schedule as submitted, he transmits it to Congress for consideration by the Joint Committee on Disposition of Executive Papers. The Administrator has no authority to initiate such schedules when the agency head is unwilling to do so or is unwilling to reduce what the Administrator considers to be unduly long retention periods in existing or proposed schedules.

In his report to the Congress of June 1963 entitled "Review of Separation, Storage, and Disposal of Records at Selected Federal Records Centers, National Archives and Records Service, General Services Administration," the Comptroller General made reference to the substantial volume of records in the Federal Records Centers operated by GSA that are classified as "retain" or "unscheduled." In accordance with the Comptroller General's recommendation in that regard, GSA is

reviewing these records with the originating agencies in an effort to have firm and realistic disposal dates established.

GSA believes, however, that the Administrator should be given authority to initiate disposal schedules in the situations that may occasionally arise when the agency head and the Administrator are unable to reach agreement on what would be reasonable retention periods for certain records in the former's custody. The agency head may be unwilling to propose any period after which the records may be disposed of, while the Administrator, on the basis of a professional archival appraisal, may consider that the records do not have such value as to warrant permanent or indefinite retention. Similarly, the period for retention proposed by the agency head may be considered by the Administrator to be unnecessarily long in relation to the character of the records.

The proposed new section 508(c) of the Federal Records Act would provide authority for the Administrator to initiate schedules, but would also require additional steps in the approval process which would preserve the integrity of agency records and protect them from premature disposal. Any schedule proposed by the Administrator would have to be submitted to the agency head for his comments. Then, if the Administrator and the agency head were unable after consultation to reach agreement regarding the schedule and if the Administrator wished to proceed any further, he would be required to submit the schedule, together with statements of the position of the agency head and of his position, to the Federal Records Council for its advice and recommendations. The Council, which is established by the Administrator pursuant to section 504 of the Federal Records Act (44 U.S.C. 394) and which includes representatives of the legislative, executive, and judicial branches, could make such further inquiry as it desired and would then notify the Administrator and the agency head of its advice and recommendations. The Administrator could then submit the schedule to Congress, as he is required to do with the usual agency-initiated schedule, but would have to transmit with the schedule the statements of position submitted to the Federal Records Council and the advice and recommendations of the Council.

Thus both the Council and the Congressional committee would be fully apprised of the agency opposition to the schedule and the reasons therefor, and the committee would have the benefit of the recommendations of an impartial reviewing body.

## Analysis

The first section of the bill would amend the Federal Property and Administrative Services Act of 1949, as amended, by renumbering sections 508 thru 511, as sections 509 thru 512, respectively, to make room at the appropriate place for the new section on disposal of records (subsection (a)). It would delete a reference to the Act of July 7, 1943, which would be repealed by section 3 of the bill and insert in lieu thereof a reference to the new section 508 which in effect replaces the 1943 Act (subsection (b)). It would further amend the Act by likewise deleting a reference to the 1943 Act in the renumbered section 509(a), no substitution of a reference to the new section being necessary since it is covered by the reference to "this title" preceding the reference to the 1943 Act (subsection (c)); and by inserting the new section 508 on disposal of records, the provisions of which are discussed in the following paragraphs (subsection (d)).

Subsection (a) of the proposed new section 508 is derived from section 2 of the Act of July 7, 1943 (44 U.S.C. 367). It would require the Administrator of General Services to issue regulations, which would be binding on all agencies of the Government, on certain aspects of records disposal. He could prescribe procedures for compiling and submitting schedules of records proposed for disposal and for disposing of records when disposal has been authorized. Likewise he could prescribe standards for reproduction of records by photographic, microphotographic, or other processes and for selective retention of records of continuing value. Under the 1943 Act this authority was vested in the National Archives Council but it has been exercised by the Administrator, since the Act of June 14, 1934 (48 Stat. 1122), which authorized the creation of the National Archives Council, was repealed in 1950 when the Federal Records Act was enacted.

The authority to prescribe standards for reproduction of records by "other processes" and for selective retention of records is not included in the 1943 Act. The subsequent development and common use of methods of reproduction of record material other than photographic make it desirable to provide standards for such methods. Section 505(b) of the Federal Records Act provides in part that "The Administrator shall establish standards for the selective retention of records of continuing value, and assist Federal agencies in applying such standards to records in their custody," and section 506(b) requires the head of each Federal agency to "cooperate" in applying these and other standards which the Administrator is authorized to establish or develop. Since observance

of standards for retention of records of continuing value, i. e., of records which should eventually be deposited in the National Archives, is highly important in assuring that such records are not intermingled with other records and inadvertently destroyed, and at the same time can contribute substantially to the orderly disposal of records which are not of permanent value, it is believed that the authority of the Administrator to issue binding regulations establishing such standards should be clarified.

Subsection (b) of the new section corresponds to section 3 of the 1943 Act (44 U.S.C. 368). It would require the head of each agency of the Government to submit records disposal schedules to the Administrator covering records of the agency which, in the opinion of the agency head, do not or will not have "sufficient administrative, legal, research, or other value to warrant their further preservation by the Government." The schedule could cover records presently in the custody of the agency head and records that might accumulate thereafter, and could provide either for immediate disposal or for disposal after specified periods of time.

The provisions of section 3 of the 1943 Act would be somewhat simplified. Section 3 provides for three types of lists or schedules, viz., lists of records that have been photographed or microphotographed and hence need not be preserved in their original form, lists of other existing records of insufficient value to warrant further preservation, and schedules of records, existing or to accumulate in the future. Lists are of records proposed for immediate disposal, while schedules cover records proposed for disposal after the lapse of specified periods. These distinctions which were of some significance when the records disposal legislation was first enacted do not appear sufficiently important today to be carried into the proposed new law. Also, in this subsection, as elsewhere in the proposed new section, authority and functions would be vested in the Administrator which were in the Archivist under the 1943 law as it was enacted. Under section 104(a) of the Federal Property Act (44 U.S.C. 391), the functions of the Archivist were transferred to the Administrator of General Services, so that the present law is not changed in this respect.

Subsection (c) of the new section 508 would provide that the Administrator submit to Congress schedules or parts of schedules submitted to him by agency heads so far as it appeared to the Administrator, on the basis of a professional archival appraisal, that the records listed met the same disposal criterion specified in subsection (b), that they did not, or would not after the period specified, have sufficient value to warrant continued preservation. This subsection is derived from the first paragraph of section 4 of the 1943 Act (44 U.S.C. 369) but would omit the provision therein for submission by the Administrator of lists or schedules of

records in his legal custody, which is subject to a proviso that lists or schedules of any existing agency shall not be submitted without the consent of the agency head. So far as the omitted provision relates to records created in GSA, it is considered that subsection (b) applies to the Administrator as an agency head, while subsection (d), which is discussed above under Explanation and Justification, would authorize the Administrator to initiate schedules covering records of other agencies whether or not they were in his legal custody. Section 4 provides that schedules shall be submitted if it appears to the Administrator that preservation is not warranted, while subsection (c) would specifically provide for the exercise of judgment based on a professional archival appraisal.

Subsection (d) of proposed section 508, which is the most important portion of the bill because it would vest in the Administrator substantially new authority, is covered above under the heading Explanation and Justification and requires no further comment here.

Subsection (e) of section 508 is similar to the second paragraph of section 4 of the 1943 Act, as added by subsection (a) of the first section of the Act of July 6, 1945 (59 Stat. 434; 44 U.S.C. 369). It would authorize the Administrator also to submit to Congress schedules proposing the disposal of records common to several or all agencies, the so-called general schedules. The subsection differs from the provisions of the 1943 Act in that it calls for the exercise of judgment on the basis of a professional archival appraisal (see discussion of subsection (c), above) and carries a proviso that appears in section 6 of the 1943 Act, as amended (44 U.S.C. 371), to the effect that authorizations granted with respect to schedules of this type shall be permissive and not mandatory. The provision of the 1943 Act that such schedules shall be submitted with the recommendations of the now defunct National Archives Council (see analysis of subsection (a), above) has been omitted. Since disposal in accordance with these schedules is merely permissive, a statutory requirement for such recommendations would appear to be unnecessary, although in practice interested agencies are consulted when the schedules are prepared.

Subsection (f), like section 5 of the 1943 Act (44 U.S.C. 370), would provide for referral of schedules submitted by the Administrator to a joint committee of the Congress, composed of two members of the Senate designated by the presiding officer and the members of the Committee on House Administration of the House of Representatives or such members thereof as may be designated for the purpose. Under the 1943 Act as

originally passed, two members of the House were to be named to this joint committee, but under the Legislative Reorganization Act of 1946 the function was vested in the Committee on House Administration. It would be the duty of the joint committee to examine the schedules submitted and report its recommendations to the Senate and the House of Representatives.

Subsection (g) follows the wording of section 6 of the 1943 Act as amended by the 1946 Act (44 U.S.C. 371), except that, as in subsection (b), reference to lists is omitted and that the proviso making the general schedules permissive and not mandatory is omitted here since it is included in subsection (d) of section 508. Subsection (g) would provide that if the joint committee also reports that the records listed do not, or will not after the period specified, have sufficient value to warrant further preservation, the Administrator shall so notify the agency or agencies having such records and the agency or agencies shall cause the records to be disposed of. Except for the general schedules, to which the proviso mentioned above is applicable, schedules upon which the joint committee has acted favorably would be mandatory upon the agencies and they would be required to comply with the regulations of the Administrator relating to procedures for disposal (see discussion of subsection (a), above). There would be no change from the present law in this regard.

Subsection (h) would provide, as does section 7 of the 1943 Act, as amended by the 1946 Act (44 U.S.C. 372), that the Administrator may empower agencies to dispose of any records covered by schedules on which the joint committee has failed to act during a session of the Congress if they were submitted not less than ten days prior to adjournment. Here, as in other sections, reference to lists would be omitted as explained above in the analysis of subsection (b).

Subsection (i) is the same as section 8 of the 1943 Act (44 U.S.C. 373). Under this subsection the Administrator could empower an agency head to dispose of records without scheduling them after they have been in existence for a specified period upon a finding that Congress has previously authorized disposal of records of that agency of the same form or character.

Subsection (j) follows the wording of section 9 of the 1943 Act (44 U.S.C. 374). It would prohibit disposal without the written approval of the Comptroller General of the United States of records pertaining to claims by or against the Government or to accounts in which the Government is concerned as debtor or creditor. The prohibition would apply even

though disposal had been authorized under subsections (f), (g), and (h) and would be applicable until settlement or adjustment had been effected in the General Accounting Office.

Subsection (k) would provide that when the records are jointly determined by the Administrator and the head of the agency having custody to constitute a continuing menace to human health or life or to property, the Administrator may take any necessary steps to eliminate such menace. It would further require the Administrator to notify the head of the agency from which the records were transferred if records in the Administrator's custody were disposed of under this authority. Subsection (k) corresponds with section 10 of the 1943 Act (44 U.S.C. 375).

Subsection (l) is a revision of section 11 of the 1943 Act (44 U.S.C. 376) and deals with the destruction of records in war emergency situations. Section 11 authorizes destruction only of records outside the territorial limits of the United States while subsection (l) would also cover records in the United States under certain conditions. The subsection is like the existing law in that it would become operative "during the existence of a state of war between the United States and any other nation, or when hostile action by a foreign power appears imminent." In such circumstances, if records could not otherwise be effectively disposed of as provided by law, the agency head having custody could authorize their destruction when retention would be prejudicial to the interests of the United States in the case of records in any military or naval establishment, ship, or other depository outside the United States and when retention would imperil the security of the United States in the case of records situated within the United States.

One provision of the 1943 Act would be eliminated. Section 11 authorizes destruction of records outside the United States which occupy space urgently needed for military purposes and which the agency head considers are without sufficient value to warrant their continued preservation. It would seem that records could be removed to another location if they were occupying space so urgently needed that they could not be held there until the normal procedures were followed. On the other hand, it is believed that under conditions of modern warfare there should be limited authority to destroy records located within the United States. Both section 11 of the 1943 Act and the proposed subsection (l) provide for a written report from the official directing the disposal to the Administrator, although the requirement of the present law that the report be made within six months is eliminated from the bill.

Subsection (m) would make reproductions of records admissible as evidence to the same extent as the original records if the reproductions were made in accordance with regulations issued by the Administrator under subsection (a). The wording of the subsection is the same as that of section 13 of the 1943 Act (44 U.S.C. 378) except for the reference to subsection (a) and the inclusion, consonant with the change in subsection (a), of "other reproductions" in addition to photographs or microphotographs.

Subsection (n), like section 14 of the 1943 Act (44 U.S.C. 379), would provide that proceeds from the sale of records authorized for disposal be paid into the Treasury unless some other disposition is authorized by law applicable to the agency concerned.

Subsection (o) is derived from section 15 of the 1943 Act (44 U.S.C. 380). It would make exclusive the procedures for destruction of records prescribed in the new section 508 and prohibit the alienation or destruction of records except in accordance with the provisions of the section.

Subsection (p) does not have any counterpart in the 1943 Act. Since the draft bill would incorporate the provisions of that Act in the proposed new section 508 of the Federal Property and Administrative Services Act of 1949, it would permit agencies to exempt themselves from those provisions to the extent permitted by section 602(d) of the Federal Property Act, which provides that "Nothing in this Act shall impair or affect any authority of" certain named agencies and named activities carried on by other agencies. Agencies cannot now exempt themselves from the 1943 Act by virtue of section 602(d) since it is not part of the Property Act. Subsection (p) would, therefore, preserve the existing situation with respect to records disposal law by making section 602(d) inapplicable to the new section 508.

Section 2 of this legislative proposal would amend the present section 511(a) of the Federal Property and Administrative Services Act of 1949, as amended (44 U.S.C. 401), which would be renumbered as section 512(a) by subsection (a) of the first section of the draft bill, by incorporating therein the definition of "records" which appears in the first section of the 1943 Act (44 U.S.C. 366). At present section 511(a) provides that "The term 'records' shall have the meaning given to such term" in the 1943 Act, thereby incorporating the 1943 Act definition by reference. Since section 3 of the draft bill would repeal the 1943 Act, the definition of "records" should be incorporated in the Property Act in terms rather than by reference.



Section 3 of the draft bill would repeal the 1943 Act (57 Stat. 380, as amended, 44 U.S.C. 366-380), relating to disposal of records, the substance of which would be incorporated in the Federal Property and Administrative Services Act of 1949, as amended, by the other sections of this bill.